APPENDIX A

STATUTORY PROVISIONS

(Emphasis added in each case)

I

Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. § 1001 et seq.

Sec. 5(c), Sec. 1004(c):

> "*Authority and functions of officers and employees.* "The same officers who preside at *the reception of evidence* pursuant to section 1006 of this title shall make the recommended decision or *initial decision required by section 1007* . . ."

Sec. 7(c), Sec. 1006(c):

> "Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and *no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense* by oral or documentary evidence, to submit rebuttal evidence, *and to conduct such cross-examination as may be required for a full and true disclosure of the facts.*"

Sec. 8(a), Sec. 1007(a):

> "In cases in which the agency has not presided at the reception of the evidence, the officer who presided . . . shall initially decide the case . . . Whenever such officers make the initial decision and *in the absence of either an appeal to the agency* or review upon motion of the agency within time provided by rule, *such decision shall without further proceedings then become the decision of the agency.*"

Sec. 8(b), Sec. 1007(b):

". . . All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; . . ."

Sec. 10(c), Sec. 1009(c):

"Reviewable Acts.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action . . ."

Sec. 10(e), Sec. 1009(e):

"*Scope of Review.*

"So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

II

Communications Act of 1934, 48 Stat. 1064, 47 U.S.C. § 151 et seq., as Amended by Communications Act Amendments, 1952, 66 Stat. 711

Sec. 5(c), Sec. 155(c):

"*Review staff; composition; responsibility, duties.*
"The Commission shall establish a special staff of employees, hereinafter in this chapter referred to as the 'review staff,' which shall consist of such legal, engineering, accounting, and other personnel as the Commission deems necessary. The review staff shall be directly responsible to the Commission and shall not be made a part of any bureau or divisional organization of the Commission. Its work shall not be supervised or directed by any employee of the Commission other than a member of the review staff whom the Commission may designate as the head of such staff. The review staff shall perform no duties or functions other than to assist the Commission, in cases of adjudication (as defined in the Administrative Procedure Act) which have been designated for hearing, by preparing a summary of the evidence presented at any such hearing, by preparing, after an initial decision but prior to oral argument, a compilation of the facts material to the exceptions and replies thereto filed by the parties, and by preparing for the Commission or any member or members thereof, without recommendations and in accordance with specific directions from the Commission or such member or members, memoranda, opinions, decisions, and orders. The Commission shall not permit any employee who is not a member of the review staff to perform the duties and functions which are to be performed by the review staff; but this shall not be construed to limit the duties and functions which any assistant or secretary appointed pursuant to section 154(f)(2) of this title may perform for the commissioner by whom he was appointed."

Sec. 308(b):

"All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the

Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; . . . Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation."

Sec. 309(a) and (b):

"*Examination, action by Commission.*

"If upon examination of any application provided for in section 308 of this title the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

"*Notification of denial; contents; reply; hearing intervention.*

"If upon examination of any such application the Commission is unable to make the finding specified in subsection (a) of this section, it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such finding . . . *Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant.*"

Sec. 409(a), (b), (c), (d):

"*Hearings—Assignment to examiners.*

(a) "In every case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, *the hearing shall be conducted by the Commission or by*

one or more examiners provided for in section 1010 of Title 5, designated by the Commission.

"*Initial decision; exceptions; record.*

(b) "*The officer or officers conducting a hearing* to which subsection (a) of this section applies *shall prepare and file an initial decision*, except where the hearing officer becomes unavailable to the Commission or where the Commission finds upon the record that due and timely execution of its functions imperatively and unavoidably require that the record be certified to the Commission for initial or final decision. In all such cases the Commission shall permit the filing of exceptions to such initial decision by any party to the proceeding and shall, upon request, hear oral argument on such exceptions before the entry of any final decision, order, or requirement. *All decisions, including the initial decision, shall become a part of the record and shall include a statement of (1) findings and conclusions, as well as the basis therefor, upon all material issues of fact, law, or discretion, presented on the record; and (2) the appropriate decision, order, or requirement.*

"*Performance by examiners; restrictions on all interested personnel.*

(c) "(1) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no examiner conducting or participating in the conduct of such hearing shall, except to the extent required for the disposition of ex parte matters as authorized by law, consult any person (except another examiner participating in the conduct of such hearing) on any fact or question of law in issue, unless upon notice and opportunity for all parties to participate. In the performance of his duties, no such examiner shall be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative, prosecutory, or other functions for the Commission or any other agency of the Government. No examiner conducting or participating in the conduct of any such hearing shall advise or consult with the Commission or any member or employee of the Com-

mission (except another examiner participating in the conduct of such hearing) with respect to the initial decision in the case or with respect to exceptions taken to the findings, ruling, or recommendations made in such case.

"(2) In any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, no person who has participated in the presentation or preparation for presentation of such case before an examiner or examiners or the Commission, and no member of the Office of the General Counsel, the Office of the Chief Engineer, or the Office of the Chief Accountant shall (except to the extent required for the disposition of ex parte matters as authorized by law) directly or indirectly make any additional presentation respecting such case, unless upon notice and opportunity for all parties to participate.

"(3) No person or persons engaged in the performance of investigative or prosecuting functions for the Commission, or in any litigation before any court in any case arising under this Act, shall advise, consult, or participate in any case of adjudication (as defined in the Administrative Procedure Act) which has been designated for a hearing by the Commission, except as a witness or counsel in public proceedings.

"*Applicability of Administrative Procedure Act.*

(d) "To the extent that the foregoing provisions of this section are in conflict with provisions of the Administrative Procedure Act, such provisions of this section shall be held to supersede and modify the provisions of that Act."

Sec. 19, *Communication Act Amendments, 1952*, 66 Stat. 722:

"This Act shall take effect on the date of its enactment, but—

"(1) Insofar as the amendments made by this Act to the Communications Act of 1934 provide for procedural changes, requirements imposed by such changes shall not be mandatory as to any agency proceeding

(as defined in the Administrative Procedure Act) with respect to which hearings have been commenced prior to the date of enactment of this Act.

"(2) The amendments made by this Act to section 402 of the Communications Act of 1934 (relating to judicial review of orders and decisions of the Commission) shall not apply with respect to any action or appeal which is pending before any court on the date of enactment of this Act."*

---

* FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON 25, D. C.

Public Notice—July 17, 1952
FCC 52-759—77901

CHANGES IN FEDERAL COMMUNICATIONS COMMISSION PROCEDURES PURSUANT TO THE COMMUNICATIONS ACT AMENDMENTS, 1952

On July 16, 1952, the President signed the Communications Act Amendments, 1952, an Act which amends the Communications Act of 1934, as amended, and which contains several provisions requiring changes in existing Commission procedures. The Commission wishes to notify all interested persons that, to the extent that its Rules and Regulations are inconsistent with the requirements of the new Act, the Rules and Regulations will be considered to be superseded thereby. Amendments to the Commission's Rules and Regulations, to bring them into full conformity with the Communications Act Amendments, 1952, will be issued as soon as practicable.

APPENDIX B

DISTRIBUTION OF BROADCAST STATIONS COMMUNITIES COMPARABLE TO EASTON

In 1939 the Commission submitted to Congress in its annual report a list of 133 cities in the United States having a population in excess of 25,000 inhabitants (1930 U. S. Census) *with no radio station.** Thirty-seven of these cities listed below were not located in any metropolitan district or contiguous to a larger city which did have local broadcast service. According to the latest published

---

* FCC Annual Report, 1939, pp. 205-6.

reports,* these 37 cities at the present time (1955) are assigned local AM, FM and TV broadcast facilities as indicated in the following tabulation:

State	City	AM	FM	TV	1950 Population
California	Riverside	1	0	0	46,764
Connecticut	Torrington	2	0	0	27,820
Illinois	Aurora	1	0	0	50,576
	Elgin	1	0	0	44,223
	Waukegan	1	0	0	38,946
Indiana	Kokomo	1	0	0	38,672
	Michigan City	1	0	0	28,395
Iowa	Burlington	1	0	0	30,613
	Clinton	1	1	0	30,379
	Ottumwa	2	0	0	33,631
	Waterloo	3	0	1	65,198
Maine	Lewiston	2	1	1	40,974
Massachusetts	Fitchburg	2	0	0	42,691
	Taunton	1	0	0	40,109
Michigan	Ann Arbor	2	0	1	48,251
	Highland Park	0	0	0	46,393
New Hampshire	Concord	1	0	0	27,988
	Nashua	1	1	0	34,669
New York	Amsterdam	1	0	0	32,240
	Kingston	1	0	1	28,817
	Poughkeepsie	2	0	0	41,023
	Watertown	2	1	1	34,350
Ohio	Elyria	1	1	1	30,307
	Hamilton	1	1	0	57,951
	Lorain	0	0	0	51,202
	Mansfield	1	0	0	43,564
	Marion	1	1	0	33,817
	Middletown	1	0	0	33,695
	Newark	1	1	0	34,275
	Springfield	3	0	0	78,508
	Steubenville	1	1	1	35,872
Pennsylvania	Lebanon	1	1	1	28,156
Tennessee	Johnson City	2	1	1	27,864
Texas	Wichita Falls	1	0	1	68,042
Virginia	Petersburg	1	0	0	35,054
Wisconsin	Appleton	2	0	0	34,010
	Oshkosh	1	0	0	41,084
Total	37	48	11	10	

The above tabulation shows that as of the present time the 37 cities listed, all generally comparable to Easton in size, population, and remoteness from any large metropolitan area, have an average of only 1.3 local radio services available, and that less than one out of three has FM or TV local service. In contrast, Easton now has *four*

* *Broadcasting, Telecasting Yearbook* 1955; *Television Factbook*, Spring 1955 Ed.

local radio services, one AM station, two FM stations, and one TV station.

APPENDIX C

DISTRIBUTION OF BROADCAST FACILITIES COMMUNITIES COMPARABLE TO ALLENTOWN

The 1950 U. S. Census Reports list 20 cities in the same general population bracket (100,000-125,000) as Allentown, Pennsylvania, exclusive of cities which form part of larger metropolitan areas (e.g., Camden, Cambridge, and Berkley). The following tabulation* shows the AM, FM and TV service presently available to each of these 20 cities:

State	City	AM	FM	TV	1950 Population
Alabama	Montgomery	6	0	2	106,525
Arkansas	Little Rock	6	6	2	102,213
California	San Jose	4	1	0	162,148
Connecticut	Waterbury	3	0	1	104,477
Delaware	Wilmington	4	1	1	110,356
Florida	Tampa	5	2	1	124,681
Georgia	Savannah	6	2	1	119,638
Illinois	Peoria	5	1	2	111,856
	Rockford	2	1	2	105,438
Indiana	South Bend	3	0	1	115,911
Louisiana	Baton Rouge	5	3	2	125,629
Mass.	Fall River	2	0	0	111,963
	New Bedford	2	2	0	109,189
Minnesota	Duluth	2	0	1	104,511
New York	Utica	3	1	1	101,531
Ohio	Canton	3	1	0	116,912
Pennsylvania	Reading	3	0	2	109,320
	Scranton	5	2	3	125,536
Tennessee	Knoxville	6	1	2	124,769
Texas	Corpus Christi	6	1	1	108,287
	Total	81	19	26	

The above tabulation shows that, in 20 cities comparable in size to Allentown, there are presently available an average of 4.1 AM, .95 FM, and 1.3 TV services, not counting other services received from different cities. Allentown, with 3 AM, 2 FM and 1 TV local service, thus is below the national average for both AM and TV local service.

* Source: *Broadcasting Telecasting Yearbook*, 1955; *Television Factbook*, Spring 1955 Ed.